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Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551

Docket No. R-1316

August 15, 2008

To the Federal Reserve Board:

Thank you for the opportunity to respond to the proposal, Docket No. R-1316, regarding notice to applicants of a risk-based credit product who do not qualify for the best terms offered. These comments are provided on behalf of FDS Bank, a Federal Savings Bank located in Mason, Ohio and an issuer of proprietary retail credit cards for Macy's and Bloomingdale's. We appreciate the challenges faced by the Board as they work to finalize a number of proposals at the same time and integrate the various proposals to create an equitable environment for consumers using open-end credit products. In relation to this proposal, we offer the following observations and suggestions for the Board to consider as they finalize the Fair Credit Reporting Risk-Based Pricing Regulations.

We understand the Board's recommendation that the risk-based disclosure not be placed in a document (such as an application) that is available to the general public. Since the disclosure could be used to request a free copy of a credit report from the credit reporting agencies, general distribution of the disclosure could place an unfair burden on those companies. However, we ask the Board to consider the special burden being placed on retailers and others who offer rapid credit decisions and immediate access to open-end credit accounts. Consumers often apply for open-end credit accounts at a retail establishment in order to immediately use the new account, if approved, to benefit from special offers available with the new account. Under this proposal, if an open-end credit product includes risk-based pricing and an applicant does not qualify for the best terms available then the applicant must receive the proposed disclosure before making their first purchase using the account. Where this becomes difficult is with the requirement that the disclosure contains the contact information for the credit reporting agency or agencies that provided information used in making the credit decision.

When reviewing a credit application, a lender could obtain a credit report from any one of the three major credit reporting agencies or any combination of the three major credit reporting agencies. By my count, there are seven possible combinations of credit reporting agency contact information that may need to be included in the proposed tabular disclosure. If a retailer must provide the risk-based disclosure to an impacted consumer before their first purchase then it would seem, from the proposal, that the retailer must have seven pre-printed versions of the tabular disclosure and must somehow convey to the sales associate which version of the disclosure to provide the applicant, based on which credit reporting agency or agencies provided information. Macy's and

Bloomington's have more than 800 stores nationwide. This means that tens of thousands of sales associates must be trained to provide the correct disclosure and many thousands of registers must be consistently stocked with seven unique risk-based disclosures. Obviously, such a complicated procedure contains an inherent risk of failure. That risk is compounded when you consider the quantity of retail outlets and bank branches that must also meet these disclosure requirements if they also offer immediate access to an open-end credit account.

We request that the Board consider several facts when finalizing this proposal:

1. Many consumers are aware of their negative or non-existent credit history and they are not surprised when they receive less than the best terms when applying for an open-end credit product with risk-based pricing. This proposed regulation will impact a minority of our approved credit applicants. Most of our credit applications are submitted at our stores and only 9-10% of approved applicants receive less than the best terms available on our open-end credit product.
2. The Board should consider what it ultimately hopes to accomplish by providing the credit bureau contact information and a free copy of a credit report to these consumers. The proposed disclosure alerts the applicant that they have not qualified for the best terms available, it informs them that credit report information was used in making that decision, and it gives the applicant the opportunity to receive a free copy of their credit report to validate that the information used to make that decision does not contain errors. If the applicant is surprised to learn that they have not qualified for the best available terms, they cannot use the information from this notice to receive a copy of their credit report, review the report for errors, submit credit bureau disputes and have the credit decision reconsidered that same day. This is a process that

will take several weeks. In reality, the consumer must decide whether to use the open-end credit account *as priced* to make their immediate purchase. Whether or not the consumer has immediate access to the credit reporting agency contact information will not impact the immediate transaction. 3. An applicant who receives this disclosure will have 60 days after receiving the notice to contact the credit reporting agency or agencies to receive a free copy of their credit report. That means the disclosure must contain a date that the credit reporting agencies can use to determine whether a consumer qualifies for a free copy of their credit report. Including a date adds additional complexity to the concept of a pre-printed disclosure.

Thus, whether the risk-based disclosure provided to the customer upon approval contains the specific credit bureau contact information is irrelevant to their immediate transaction. The creditor should have the option to provide the consumer with a risk-based disclosure that does not contain the specific credit bureau contact information but informs the applicant that they will receive that information by mail within a reasonable period of time. The creditor could then prepare and mail a letter in a format similar to an adverse action letter that the applicant could use to obtain a free copy of their credit report(s) if they choose. Removing the specific credit bureau contact information from the disclosure would also allow the disclosure to be printed in a credit application and then affected applicants could be directed to that disclosure within a credit approval notice.

In addition, the Board should permit flexibility in formatting the proposed disclosure. Some retailers may wish to use register receipts to provide the required

disclosure. The Board should permit the disclosure to be formatted in a manner that would accommodate register receipts and other delivery channels.

We reviewed the proposed disclosure and propose some modifications in an attempt to shorten the disclosure and make it easily understandable by the least sophisticated consumer. However, sophisticated consumers may be insulted by the tone of the disclosure as well as the ever increasing volume of disclosures. Typically, the creditor and its employees bear the brunt of such criticism from consumers. Including a notice that the disclosure is required by Federal Law may deflect some consumer hostility. In addition, we combined the information in the first two boxes of the proposed disclosure since the information was of a complementary nature. This makes the disclosure appear shorter which may increase the likelihood that a consumer will read it. We attached the model form containing our suggestions in both register receipt and tabular formats, although we encourage the Board to allow flexibility for different formats to comply with the notice requirements. Our proposal does not reflect our recommendation above regarding a version of the disclosure that would not contain specific credit bureau information.

Finally, depending on the eventual disclosure and how the creditor will deliver that disclosure to an applicant, it is likely that system programming will be necessary to comply with this regulation. We ask the Board to consider these requirements and permit a sufficient implementation period. We anticipate that the Board may integrate the implementation periods of the various regulatory proposals being evaluated. If not, we encourage the Board to permit at least 12 months to implement the final risk-based pricing regulation.

We thank you again for the opportunity to comment on this proposal and we hope that our feedback will be useful as you finalize the Fair Credit Reporting Risk-Based Pricing Regulations.

Sincerely,

Steven L. Franks

H-1 Model form for risk-based pricing notice
(Register Receipt Format)

**{Name of Entity Providing the Notice}
Your Credit Report(s) and the Cost of
Credit (Notice required by Federal Law)**

**What is a credit report and how
do we use them?**

A credit report is a record of
your credit history. It includes
information such as the payment
history on your credit accounts and how
much you owe on them.

The terms of our credit offer to you,
such as (Annual Percentage Rate/Downpayment)
is based in whole or in part on
information from your credit report(s).

These terms may be less favorable than
those offered to consumers with
better credit histories.

**How can you receive a copy
of your credit report(s)?**

You have a right to receive a free
copy of your credit report(s) from
the credit bureau(s) for 60 days
after you receive this notice. To request
your free credit report(s), contact:

{Name}
{Address}
{Phone Number}

{Information for other credit bureaus would follow if necessary.}

**What if there are mistakes
in your credit report(s)?**

If you find mistakes on your report(s)
you have a right to dispute them.
Contact the credit bureau(s) above to
dispute any mistakes. You should check
your credit reports regularly to make
sure they are correct.

**How can you learn more about
credit reports?**

For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.

H-1 Model form for risk-based pricing notice

(Tabular Format)

**{Name of Entity Providing the Notice}
Your Credit Report(s) and the Cost of
Credit (Notice Required by Federal Law)**

<p>What is a credit report and how do we use them?</p>	<p>A credit report is a record of your credit history. It includes information such as the payment history on your credit accounts and how much you owe on them. The terms of our credit offer to you, such as (Annual Percentage Rate/Downpayment) is based in whole or in part on information from your credit report(s). These terms may be less favorable than those offered to consumers with better credit histories.</p>
<p>How can you receive a copy of your credit report(s)?</p>	<p>You have a right to receive a free copy of your credit report(s) from the credit bureau(s) for 60 days after you receive this notice. To request your free credit report(s), contact: {Credit bureau contact information.}</p>
<p>What if there are mistakes in your credit report(s)?</p>	<p>If you find mistakes on your report(s) you have a right to dispute them. Contact the credit bureau(s) above to dispute any mistakes. You should check your credit reports regularly to make sure they are correct.</p>
<p>How can you learn more about credit reports?</p>	<p>For more information about credit reports and your rights under federal law, visit the Federal Reserve Board's web site at www.federalreserve.gov, or the Federal Trade Commission's web site at www.ftc.gov.</p>